Public Prosecutor v Kammoon Wannga & Anor

HIGH COURT (KANGAR) — CRIMINAL APPEAL NO 45–04 OF 2006
ZAMANI A RAHIM J
18 AUGUST 2008

Criminal Law — Penal Code — s 304(a) — Culpable homicide not amounting to murder — Sentence, assessment of — Mitigating factors, consideration of — Whether guilty plea automatically entitled accused to discount in sentence — Public interest, consideration of — Whether binding over under s 294 of the Criminal Procedure Code appropriate — Whether custodial sentence called for

Criminal Procedure — Sentence — Culpable homicide not amounting to murder — Assessment of adequate sentence — Mitigating factors considered — Consideration of guilty plea entered at earliest reasonable opportunity — Public interest, consideration of

Both the accused persons pleaded guilty to an alternative charge of culpable homicide not amounting to murder under s 304(a) of the Penal Code ('Code'). Upon conviction, both mitigated. The first accused submitted that: (i) his mother had passed away and his 87-year-old father was in very poor health; (ii) he was a first offender; (iii) he had pleaded guilty to the alternative charge at the earliest opportunity thereby saving costs and the court's time; (iv) he was remorseful and promised not to commit any criminal offence in future. The second accused submitted as follows: (a) he was a divorcee with children looked after by his parents; (b) he was a first offender; (c) it was an accepted practice to be given a discount in sentence for pleading guilty; (d) his role in the crime was less aggressive compared to the first accused; (e) he regretted his actions and had apologised to the family members of the deceased victim. The prosecution however pressed for a deterrent sentence and submitted: (i) it was not an automatic principle that a lenient sentence be imposed for every plea of guilt; (ii) the offence of culpable homicide not amounting to murder under s 304(a) was serious and the sentence had to be commensurate with the crime committed; and (iii) the public interest factor usually outweighed the personal hardship caused to the accused.

Held, sentencing the first accused to eight years' six months' imprisonment and the second accused to eight years' imprisonment:

(1) The trial court's sentencing power is a discretionary power that is not

lightly disturbed on appeal (see para 16). *Bhandulananda Jayatilake v Public Prosecutor* [1982] 1 MLJ 83; *Ganesan a/l Nachiappan & Ors v Public Prosecutor* [2000] 3 MLJ 244 followed.

(2) A guilty plea is a mitigating factor as it saves expense, time and inconvenience. Generally, an accused who pleads guilty is entitled to a discount or credit. To be of mitigating value, the guilty plea should be made at the earliest reasonable opportunity and not made late in the trial. However, it is not in every case, that an accused who pleads guilty is entitled to an automatic reduction of sentence (see paras 17–21). *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167 followed; *Public Prosecutor v Dato Nallakaruppan Solaimalai* [1999] 2 CLJ 596 followed; *Sau Soo Kim v Public Prosecutor* [1975] 2 MLJ 134 followed; *Public Prosecutor v Chan Akau* [2000] 4 MLJ 471 followed; *R v Costen* (1980) 11 Cri App (S) CA 182 referred.

(3) The public interest factor is another important factor for the trial court to take into account. The public interest factor is subject to qualifications. It varies according to time, place and circumstances. The trial court must also look at the overall picture in a proper perspective to determine the length of a custodial sentence (see paras 22–23). *R v Kenneth John Ball* 35 Cr App R 164 followed; *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 referred; *Public Prosecutor v Tia Ah Leng* [2000] 5 MLJ 401 referred; *New Tuck Shen v Public Prosecutor* [1982] 1 MLJ 27 followed; *Vinaga Moorthy a/l Gopal v Public Prosecutor* [2003] 2 MLJ 87 followed.

(4) Culpable homicide not amounting to murder under s 304(a) of the Code is a serious offence. Thus in the instant case, a custodial sentence was called for. Binding over under s 294 of the Criminal Procedure Code would be quite inappropriate. On the facts, the term of imprisonment had to be sufficient to reform and rehabilitate both accused. The term had also to be sufficiently long to deter like-minded persons. However, the term ought not to be too long or harsh to make it difficult for the first and second accused to settle back into society upon release from prison (see paras 29–30).

(5) In the instant case, the killing was not committed in the course of any crime. It was not premeditated. The manner in which the offence was committed was not as ferocious and gruesome as in some other cases. Both first and second accused were also voluntarily intoxicated at the material time, though self-induced intoxication is not a defence (see para 31). *Kenneth Fook Mun Lee v Public Prosecutor* [2007] 2 MLJ 130 followed.

(6) Both first and second accused pleas of family hardship had no mitigating effect. However, the court would take into consideration: (i)

both accused were first-offenders; (ii) they were remorseful, had repented and even apologised to the family members of the deceased victim; and (iii) both accused persons had entered their guilty pleas at the earliest reasonable opportunity. They were both entitled to a one-third discount in sentence. After taking into consideration the discount, first accused ought to be sentenced to eight years' and six months' imprisonment and the second accused to eight years' imprisonment. Both their sentences to run from the date of their arrest (see paras 34–36). *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45 followed.

[Bahasa Malaysia summary

Kedua-dua orang tertuduh telah mengaku salah atas tuduhan alternatif homisid salah tak terjumlah kepada membunuh di bawah s 304(a) Kanun Keseksaan ('Kanun'). Apabila disabitkan, kedua-duanya memohon peringanan hukuman. Tertuduh pertama menghujah bahawa: (i) ibunya telah meninggal dunia dan ayahnya yang berusia 87 tahun berada dalam keadaan tua dan sakit; (ii) dia merupakan pesalah pertama; (iii) dia telah mengaku salah kepada tuduhan alternatif pada peluang terawal oleh itu telah menjimatkan kos dan masa mahkamah; (iv) dia telah bertaubat dan berjanji tidak akan melakukan sebarang kesalahan jenayah di masa hadapan. Tertuduh kedua menghujah seperti berikut: (a) dia merupakan seorang duda dengan anak-anak yang dijaga oleh ibu bapanya; (b) dia adalah pesalah pertama; (c) telah menjadi amalan yang diterima iaitu peringanan hukuman akan diberikan sekiranya mengaku bersalah; (d) peranannya dalam jenayah kurang agresif jika dibandingkan dengan tertuduh pertama; (e) dia menyesali tindakannya dan telah meminta maaf kepada ahli keluarga kepada mangsa yang meninggal. Pihak pendakwaan sebaliknya mendesak agar hukuman mencegah dikenakan dan mengemukakan: (i) bukanlah satu prinsip automatik bahawa hukuman ringan akan dikenakan untuk setiap pengakuan salah; (ii) kesalahan homisid salah tak terjumlah kepada membunuh di bawah s 304(a) adalah serius dan hukuman mestilah setimpal dengan jenayah yang dilakukan; dan (iii) faktor kepentingan awam melebihi kesusahan peribadi tertuduh.

Diputuskan, menghukum tertuduh pertama kepada lapan tahun enam bulan penjara dan tertuduh kedua kepada lapan tahun penjara:

(1) Kuasa menghukum mahkamah merupakan kuasa budi bicara yang tidak boleh diganggu sewenang-wenangnya atas rayuan (lihat perenggan 16). *Bhandulananda Jayatilake v Public Prosecutor* [1982] 1 MLJ 83 diikut; *Ganesan a/l Nachiappan & Ors v Public Prosecutor* [2000] 3 MLJ 244 diikut.

(2) Pengakuan salah merupakan satu faktor peringanan memandangkan kos, masa, dan ketidakselesaan dapat dijimatkan. Secara umumnya, tertuduh yang mengaku bersalah berhak mendapatkan peringanan hukuman atau pujian. Untuk menjadi nilai peringanan, pengakuan salah hendaklah dilakukan pada peluang yang terawal dan bukan pada waktu perbicaraan. Walau bagaimanapun, tidak semua kes tertuduh mengaku salah berhak mendapat pengurangan hukuman secara automatik (lihat perenggan 17–21). *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167 diikut; *Public Prosecutor v Dato Nallakaruppan Solaimalai* [1999] 2 CLJ 596 diikut; *Sau Soo Kim v Public Prosecutor* [1975] 2 MLJ 134 diikut; *Public Prosecutor v Chan Akau* [2000] 4 MLJ 471 diikut; *R v Costen* (1980) 11 Cri App (S) CA 182 dirujuk.

(3) Kepentingan awam merupakan salah satu faktor penting yang perlu diambilkira oleh mahkamah. Faktor kepentingan awam bergantung kepada kelayakan. Kepentingan awam berubah-ubah mengikut masa, tempat dan keadaan. Mahkamah perlu melihat secara keseluruhan dalam perspektif yang betul untuk menentukan kekuatan hukuman tahanan (lihat perenggan 22–23). *R v Kenneth John Ball* 35 Cr App R 164 diikut; *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 dirujuk; *Public Prosecutor v Tia Ah Leng* [2000] 5 MLJ 401 dirujuk; *New Tuck Shen v Public Prosecutor* [1982] 1 MLJ 27 diikut; *Vinaga Moorthy a/l Gopal v Public Prosecutor* [2003] 2 MLJ 87 diikut.

(4) Homisid salah tak terjumlah kepada membunuh di bawah s 304(a) Kanun merupakan kesalahan yang serius. Oleh itu di dalam kes ini, hukuman tahanan perlu dikenakan. Mengikat jamin di bawah s 294 Kanun Prosedur Jenayah adalah tidak sesuai. Bergantung kepada fakta, tempoh penjara hendaklah mencukupi untuk mengubah dan memulihkan kedua-dua tertuduh. Tempoh juga mestilah cukup lama untuk mencegah orang yang berfikiran serupa. Walau bagaimanapun, tempoh tidak sepatutnya terlalu lama atau teruk hingga membuatkan kedua-dua tertuduh sukar untuk menyesuaikan diri dengan masyarakat setelah dibebaskan dari penjara (lihat perenggan 29–30).

(5) Dalam kes ini, pembunuhan tidak dijalankan dalam perjalanan jenayah. Pembunuhan ini tidak dirancang terlebih dahulu. Cara kesalahan ini dijalankan tidak ganas dan mengerikan sepertimana dalam kes-kes lain. Kedua-dua tertuduh juga mabuk pada waktu itu, walaupun mabuk yang dilakukan sendiri bukanlah satu pembelaan (lihat perenggan 31). *Kenneth Fook Mun Lee v Public Prosecutor* [2007] 2 MLJ 130 diikut.

(6) Kedua-dua rayuan tertuduh pertama dan kedua tentang kesusahan keluarga tiada kesan peringanan. Bagaimanapun, mahkamah akan mempertimbangkan: (i) kedua-dua tertuduh merupakan pesalah

pertama; (ii) mereka telah menyesal, bertaubat dan telah meminta maaf kepada ahli keluarga mangsa yang meninggal; dan (iii) kedua-dua tertuduh telah mengaku salah pada peluang terawal yang diberikan. Mereka berhak mendapat peringanan satu pertiga dalam hukuman. Selepas mengambilkira peringanan tersebut, tertuduh pertama patut mendapat hukuman sehingga lapan tahun dan enam bulan penjara dan tertuduh kedua sehingga lapan tahun penjara. Kedua-dua hukuman berkuatkuasa dari tarikh penangkapan mereka (lihat perenggan 34–36). *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45 diikut.]

Notes

For a case on s 304(a) of the Penal Code, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) para 1597.

For cases on culpable homicide not amounting to murder, see 5(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 3556–3560.

Cases referred to

Abdul Karim v R [1954] MLJ 86, HC (refd)
Bhandulananda Jayatilake v PP [1982] 1 MLJ 83, FC (folld)
Ganesan a/l Nachiappan & Ors v PP [2000] 3 MLJ 244, CA (folld)
Kenneth Fook Mun Lee v PP [2007] 2 MLJ 130, FC (folld)
Mohamed Abdullah Ang Swee Kang v PP [1988] 1 MLJ 167, SC (folld)
New Tuck Shen v PP [1982] 1 MLJ 27, HC (folld)
Pendakwa Raya lwn Chan Akau [2000] 4 MLJ 471, HC (folld)
Pendakwa Raya v Mohd Fuad bin Othman [2001] 5 MLJ 549, HC (refd)
Pendakwa Raya lwn Noor Hafidah Yeop Mat Isa dan lain-lain [2007] 4 MLJ 478, HC (refd)
Pendakwa Raya lwn Soo Tai Leng [2005] 7 MLJ 363, HC (refd)
PP v Dato Nallakaruppan Solaimalai [1999] 2 CLJ 596, HC (folld)
PP v Loo Choon Fatt [1976] 2 MLJ 256, HC (refd)
PP v Nasir bin Malik [1995] 3 MLJ 637, HC (refd)
PP v Nazaruddin bin Ahmad & Ors [1993] 2 MLJ 9, HC (refd)
PP v Ravindran & Ors [1993] 1 MLJ 45, HC (folld)
PP v Safian Abdullah & Anor [1983] 1 CLJ 324, HC (refd)
PP v Tai You Choy [1982] CLJ (Rep) 687, HC (refd)
PP v Tay Chuan Beng & Anor [1989] 1 MLJ 403; [1989] SLR 161, HC (refd)
PP v Tia Ah Leng [2000] 5 MLJ 401, HC (refd)
PP v Soh Soo Yang & Anor [2001] 5 MLJ 356, HC (refd)
R v Kenneth John Ball 35 Cr App R 164 (folld)
R v Costen (1980) 11 Cri App (S) CA 182 (refd)
Sau Soo Kim v PP [1975] 2 MLJ 134, FC (folld)
Tia Ah Leng v PP [2004] 4 MLJ 249, CA (refd)
Vinaga Moorthy a/l Gopal v PP [2003] 2 MLJ 87, CA (folld)
Yusmarin bin Samsudin v PP [1999] 4 MLJ 625, CA (refd)

Legislation referred to

Criminal Procedure Code 177A(1), ss 294
Penal Code ss 34, 109, 149, 302, 304, 304(a)

Azman Abu Hassan (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Harminder Singh (Syarikat Harminder Singh) for the first respondent.
S Devandran (Devandran & Co) for the second respondent.

Zamani A Rahim J:

THE CHARGE

[1] The prosecution had, on 16 November 2006, tendered a consent to prosecute under s 177A(1) of the Criminal Procedure Code, authorising Kammoon Wannga, OKT 1 and Pirom Wongjanta, OKT 2 to be prosecuted for an offence of murder of a Thai male named Yusof Kolam under s 302 of the Penal Code. The consent to prosecute and the charge were marked as exhs P1 and P2 respectively.

[2] On 10 July 2008 OKT 1 and OKT 2 were again produced before the Kangar High Court. The prosecution had put in an amended principal charge under s 302 of the Penal Code which was marked as exh P3 and also an alternative charge for an offence of culpable homicide not amounting to murder, punishable under s 304(a) of the Penal Code which was marked as exh P4.

[3] The amended principal charge, P3 read as follows:

Pertuduhan Utama (Pindaan)

Bahawa kamu bersama-sama dua orang lagi yang masih bebas pada 8 Mac 2006 antara jam 12.00 tengahari hingga 10 Mac 2006 jam lebih kurang 8.30 pagi di kawasan kebun getah Batu 21, Jalan Padang Besar, di dalam Negeri Perlis telah membunuh Yusob Kolam berumur 28 tahun (Satun Border Pass Thailand No 1290) dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan dan dibaca bersama Seksyen 34 Akta yang sama.

[4] The alternative charge, P4 read as follows:

Pertuduhan Alternatif

Bahawa kamu bersama-sama dua orang lagi masih bebas pada 8 Mac 2006 antara jam 12.00 tengahari hingga 10 Mac 2006 jam lebih kurang 8.30 pagi di kawasan kebun getah Batu 21, Jalan Padang Besar, di dalam Negeri Perlis, telah menyebabkan kematian kepada Yusob Kolam berumur 28 tahun (Satun Border

Pass Thailand No 1290) dengan niat menyebabkan kecederaan tubuh badan yang mungkin menyebabkan kematiannya, dan dengan itu kamu telah melakukan homisid salah yang tidak terjumlah kepada kesalahan membunuh yang boleh dihukum di bawah Seksyen 304(a) Kanun Keseksaan dan dibaca bersama Seksyen 34 Akta yang sama.

THE PLEA OF GUILTY

[5] The charges, P3 and P4 were separately read and explained to each of them ie OKT 1 and OKT2 in the Thai language by a qualified court Thai interpreter. Each of them understood the charges, P3 and P4. OKT 1 and OKT 2 separately pleaded guilty to the alternative charge, P4 and both of them understood the nature and consequences of their pleas.

[6] The statement of facts were read by the learned deputy public prosecutor (DPP) and explained to each of them. The statement of facts were as follows:

Fakta kes

Kejadian berlaku semasa OKT 1 dan OKT 2 serta 2 lagi rakan mereka yang masih bebas sedang minum minuman keras sehingga mabuk. OKT 1 menceritakan kepada OKT 2 beliau mengesyaki si mati telah mengambil dompetnya. Selepas itu OKT 1 terus beredar dan balik ke dangaunya untuk menutup enjin penyiram pokok tembikai tanpa diketahui oleh OKT 2 dan dua lagi rakan mereka.

Semasa OKT 1 berada di dangau miliknya, si mati telah datang dan mengajak OKT 1 menangkap musang. Apabila sampai di dangau milik si mati, si mati memberitahu musang berada di atas pokok getah di belakang dangau tetapi OKT 1 kemudiannya mendapati musang yang dimaksudkan oleh si mati tiada. OKT 1 kemudiannya melihat si mati mentertawakanya kerana berjaya mempermainkan OKT 1.

Tidak lama selepas itu, OKT 2 dan dua lagi rakan mereka yang masih bebas dalam keadaan mabuk telah sampai di dangau milik si mati dan mendapati OKT 1 berada di situ. Salah seorang daripada rakan OKT 1 dan OKT 2 memanggil si mati keluar dari dangau. Semasa berada di luar dangau si mati, telah berlaku pertengkaran di antara si mati, OKT 1 dan OKT 2 dan dua lagi rakan mereka yang masih bebas. *OKT 1 kemudiannya telah mencapai sebatang kayu dan menyerang si mati dengan memukul di bahagian muka si mati dengan kuat menyebabkan si mati terjatuh.* Selepas itu OKT 2 dan dua orang lagi rakan mereka yang masih bebas turut menumbuk dan menendang si mati berkali-kali sehingga si mati menjadi lemah, tidak mampu untuk melawan dan seterusnya mati.

Selepas OKT 1 dan OKT 2 dan dua lagi rakan mereka yang masih bebas menyedari si mati telah mati mereka telah mengangkat dan membuang si mati ke dalam terusan yang berada lebih kurang 50 meter daripada dangau milik si mati.

Pada 10 Mac 2006 lebih kurang jam 9.25 pagi satu aduan telah diterima daripada orang awam iaitu Ismail bin Ibrahim mengenai satu penemuan mayat di dalam terusan di kebun getah berhampiran kilang pukat di kawasan perindustrian Padang

Besar dan hasil siasatan mendapati si mati dikenali sebagai Yusob Kolam seorang warganegara Thailand dan si mati adalah orang yang telah diserang dan dibuang ke dalam terusan oleh OKT 1 dan OKT 2 dan dua lagi rakan mereka yang masih bebas.

Laporan 'Post Mortem' mengesahkan bahawa sebab-sebab kematian adalah 'head injury due to blunt trauma'. Ini bersamaan dengan senjata yang digunakan iaitu satu objek tumpul yang berat. Kecederaan serius dikesan pada bahagian kiri kepala si mati dan terdapat juga kesan koyakan pada bahagian tepi mata sebelah kanan. Selain itu terdapat juga 'multiple crack' pada tengkorak kepala si mati dan keretakan pada tulang muka si mati.

Berdasarkan siasatan mendapati OKT 1 dan OKT 2 secara niat bersama melakukan kesalahan telah mematikan orang dengan salah. Seterusnya OKT 1 dan OKT 2 dituduh dengan sewajarnya.

[7] The statement of facts were marked as exh P5. Having read the facts, the learned DPP had tendered a murder weapon, namely, a piece of wood approximately 3 feet in length as exh P6. Followed by a postmortem report on the deceased, Yusob Kolam as exh P7. Both the accused admitted that the statement of facts, P5 were correct.

[8] After I was satisfied that OKT 1 and OKT 2 pleas were unequivocal, I have accepted their pleas of guilty and convicted them under the alternative charge, P4 of culpable homicide not amounting to murder under s 304(a) of the Penal Code which carries a mandatory term of imprisonment of not exceeding 20 years and also liable to be fined.

MITIGATION

OKT 1

[9] Counsel for OKT 1 had put in a written submission together with the authorities. The mitigation may be summarised as follows.

(a) OKT 1 is a Thai citizen, aged 35 years old. He is unmarried.

(b) His mother had passed away. His father is now aged 87 years and in a very poor health.

(c) He was a first offender.

(d) He came to Malaysia to seek employment. At the time of the incident, he was employed at water melon plantation, drawing an income of about RM600 per month.

(e) OKT 1 had pleaded guilty at the earliest opportunity when an alternative charge under s 304(a) of the Penal Code was offered to him.

By pleading guilty, he had save costs and time of the court. Counsel sought a discount on the custodial sentence that would have been imposed after a full trial in this type of offence. Learned counsel also recognised the disparity of sentence may be imposed having regard to the roles played by the accused: see *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45, *Public Prosecutor v Nazaruddin bin Ahmad & Ors* [1993] 2 MLJ 9.

(f) Learned counsel recognised that in deciding the appropriate sentence, the first and foremost consideration is public interest: see *Pendakwa Raya v Mohd Fuad bin Othman* [2001] 5 MLJ 549, and

(g) OKT 1 had realised that he had made a grave mistake in his life and remorseful of what he had done. He promised not to commit any criminal offence in future.

OKT 2

[10] Learned counsel on behalf of OKT 2 had pleaded in mitigation as follows:

(a) OKT 2 is also a Thai national, aged 36 years old, a married man with two children, aged 15 years and 13 years old respectively.

(b) OKT 2 had divorced with his wife about 12 years ago and his children are now being look after by his parents.

(c) He is a first offender.

(d) Learned counsel submitted that it is an accepted rule of practice that by pleading guilty the accused is entitled to be given a discount on custodial sentence, though it is not automatic: see *Mohd Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167; [1987] CLJ (Rep) 209.

(e) The court must strike a balance between the public interest and the interest of the accused: see *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256.

(f) The role played by OKT 2 was some what less aggressive compared to the role played by OKT 1 in the commission of the crime. It was OKT 1 who had struck the fatal blow on the deceased's head with a piece of wood which was consistent with the cause of death stated in the postmortem report, P7, that is, head injury due to blunt trauma.

(g) OKT 2 had regretted and he apologised to the family members of the deceased.

(h) Counsel urged this court that the sentence be imposed from the date of his arrest.

PROSECUTION REPLY TO OKT 1 AND OKT 2 MITIGATION

[11] While both OKT 1 and OKT 2 were praying for a lenient sentence, the learned DPP was asking for a deterrent sentence to be passed. Though they had pleaded guilty to the alternative charge under s 304(a), it was not an automatic principle that a lenient sentence be given: see *Tia Ah Leng v Public Prosecutor* [2004] 4 MLJ 249; [2004] 4 CLJ 77.

[12] The offence of culpable homicide not amounting to murder under s 304(a) is a serious offence. The sentence that was going to be passed by this court must commensurate with the crime committed by them with the purposes of reforming and rehabilitating of OKT 1 and OKT 2 and also to serve as a deterrent to the offenders of the like mind. The learned DPP had cited the case of *Public Prosecutor v Safian Abdullah & Anor* [1983] 1 CLJ 324 where Wan Yahya J had imposed a sentence of 14 years imprisonment.

[13] The learned DPP also cited the Court of Appeal case of *Yusmarin bin Samsudin v Public Prosecutor* [1999] 4 MLJ 625 on the principles of sentencing where Her Ladyship Siti Norma Yaakob JCA said that the court is empowered to take the following considerations:

(a) the extent and seriousness of the offence committed;

(b) the guilty antecedents; and

(c) the public interest factor.

[14] The learned DPP submitted that the personal hardship caused to the accused was more often than not outweighed the public interest factor. The interests of the accused must be balanced with the interests of the public.

SENTENCING PRINCIPLES AND GUIDELINES

[15] The power of sentencing given to a trial court is discretionary one and in order to disturb the sentence imposed, an appellate court must be convinced that the trial judge had erred in applying the correct principles of sentencing or had embarked on some unauthorised or extraneous exercise of discretion. In the Federal Court case of *Bhandulananda Jayatilake v Public Prosecutor* [1982] 1 MLJ 83, Raja Azlan Shah, Ag LP said:

> Is the sentence harsh and manifestly excessive? We would paraphrase it in this way. As this is an appeal against the exercise by the learned judge of a *discretion* vested in him, is the sentence so far out side the normal discretionary limits as to enable

this court to say that its imposition must have involved an error of law of some description? I have had occasion to say elsewhere, that the very concept of judicial discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred. That is quite inevitable. Human nature being what it is, different judges applying the same principles at the same time in the same country to similar facts may some times reach different conclusions (see *Jamieson v Jamieson* (1)). It is for that reason that some very conscientious judges have thought it their duty to visit particular crimes with exemplary sentences; whilst others equally conscientious have thought it their duty to view the same crimes with leniency. Therefore sentences do vary in apparently similar circumstances with the habit of mind of the particular judge. It is for that reason also that this court has said it again and again that it will not normally interfere with sentences, and the possibility or even the probability, that another court would have imposed a different sentence is not sufficient, per se, to warrant this court's interference.

For a discretionary judgment of this kind to be reversed by this court, it must be shown to our satisfaction that the learned judge was embarking on some unauthorised or extraneous or irrelevant exercise of discretion ...

[16] In the same vein the Court of Appeal case of *Ganesan a/l Nachiappan & Ors v Public Prosecutor* [2000] 3 MLJ 244; [2002] 3 CLJ 302, Haidar Mohd Noor JCA expressed his view as follows:

The power of sentencing given to a trial court is a discretionary one and in order for us, as the appellate court, to disturb the sentence imposed, we must be convinced that the trial judge had erred in applying the correct principles of sentencing or had embarked on some unauthorised or extraneous exercise of discretion (see *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 and *Bhandulananda Jayatilake v Public Prosecutor* [1982] 1 MLJ 83).

[17] On pleading guilty, the accused person is normally given credit or discount. In the Supreme Court case of *Mohamed Abdullah Ang Swee Kang v Public Prosecutor* [1988] 1 MLJ 167, Mohamed Azmi SCJ had expressed his view as follows:

It is generally accepted that the extent of reduction an account of a plea of guilty would be between one quarter and one third of what otherwise would have been the sentence.

[18] If a plea of guilty is made too late in the trial it may cease to have mitigating effect. In *Public Prosecutor v Dato Nallakaruppan Solaimalai* [1999] 2 CLJ 596, Arifin Jaka J said:

> Pengakuan salah seseorang tertuduh adalah salah satu faktor yang diambil kira oleh mahkamah apabila menjatuhkan hukuman dan merupakan salah satu faktor untuk meringankan hukuman. Walau bagaimanapun, OKT telah mengaku salah hanya selepas dua belas hari perbicaraan dijalankan dan setelah pertuduhan asal telah dipinda. Banyak masa telah terbuang dan saksi-saksi telah mengalami kesulitan. Oleh itu pengakuan salah yang dibuat oleh OKT di dalam keadaan ini tidaklah boleh diterima sebagai satu fakta yang boleh meringankan hukuman.

[19] It is, therefore, desirous that the plea of guilty be entered at an earliest reasonable opportunity before the witnesses give evidence in the trial. Only then such a plea may be considered as a meaningful mitigating factor.

[20] The rationale that the plea of guilty should be treated as a mitigating factor as 'it not only saves the country a great expense of a length trial but also saves time and inconvenience, particularly witnesses': per Suffian LP in *Sau Soo Kim v Public Prosecutor* [1975] 2 MLJ 134.

[21] However, a caveat may be placed here. Not in every cases of pleading guilty, the accused is entitled to an automatic reduction of sentence. In the case of *Public Prosecutor v Chan Akau* [2000] 4 MLJ 471 the accused pleaded guilty for an offence of culpable homicide not amounting to murder under s 304(a) of the Penal Code and the accused was sentenced to 10 years imprisonment. His Lordship Augustine Paul J said that there was no provision upon pleading guilty as a rule of thumb the accused is to be given a lenient sentence. His Lordship referred to Lord Lane CJ in the case of *R v Costen* (1980) 11 Cri App (S) CA 182 as follows:

> But there are certain exceptions, likewise well authenticated in the authorities, to that general rule that discount will be allowed for a plea of guilty. The first and most important exception is the protection of the public. Where it is necessary that a long sentence, if necessary the maximum sentence should be passed in order to protect the public, in those circumstances a plea of guilty may not result in any discount.

[22] Another important factor for the trial court to take into account is the public interest factor. Hilbery J in the case of *R v Ball* 35 Cr App R 164 had expressed his views as follows:

> The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public serves the public interest in two ways. It may deter others who might be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal

to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living. A

[23] The above observation by Hilbery J has been followed in several local cases. See the case of *Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 and *Public Prosecutor v Tia Ah Leng* [2000] 5 MLJ 401. The public interest factor is subject to qualifications. It varies according to time, place and circumstances of each case. In *New Tuck Shen v Public Prosecutor* [1982] 1 MLJ 27, Wan Yahya J (as he then was) explained at pp 30–31 in the following words: B C

Public interest varies according to time, place and circumstances of each case including its nature and prevalence. What may be of public interest in one place may differ from another. Similarly, inducement to turn from criminal ways into honest living can take several forms and will have to depend to a greater extent on the attitude of the offender and his suitability for any particular type of reformation. D

[24] The offence of culpable homicide not amounting to murder under the first limb of s 304 of the Penal Code is a serious offence. This is reflected in its punishment. Section 304(a) which provides: E

Whoever commits culpable homicide not amounting to murder shall be punished —

(a) with imprisonment for a term which may extend to twenty years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or F

(b) ... G

[25] The trial court must also look at the overall picture in a proper perspective to determine the length of custodial sentence. In the Court of Appeal case of *Vinaga Moorthy a/l Gopal v Public Prosecutor* [2003] 2 MLJ 87; [2003] 1 CLJ 178, Gopal Sri Ram JCA stipulated four factors to be considered. His Lordship said: H

In assessing the length sentence, the court must look at the overall picture in perspective by considering, firstly, the gravity of the type of offence committed; secondly, the facts in the commission of the offence; thirdly, the presence or absence of mitigating factors, and, fourthly, the sentences that have been imposed in the past for similar offences to determine the trend of sentencing policy, if any. I

A The fact that a sentence of imprisonment is imposed as a deterrence does not justify the sentencer in passing a sentence of greater length than what the facts of the offence warrant.

B **[26]** As regard the imposition of a deterrent sentence, Brown Acting CJ in *Abdul Karim v R* [1954] MLJ 86 had made the following observation:

In the matter of punishment, the 'type of offence' is the concern of the Legislature, which has provided the maximum punishment which can be inflicted for a serious C offence of the type. The particular offence, and the particular offender, are the concern of the court, whose business it is to decide what punishment is merited upon the facts of the individual case within the limits which the Legislature has provided. Any tendency to standardise punishment for any type of offence is to be deplored because it means that the individual offender is being punished not upon D the facts of his particular case but because he has committed an offence of that type.

[27] On disparity of sentences, the general rule is that any unfair and E unjust sentences amongst two or more accused persons should be avoided. However, there are cases where disparity of sentences are recognised by our courts: see *Public Prosecutor v Ravindran & Ors* [1993] 1 MLJ 45 and *Public Prosecutor v Nazarudin bin Ahmad & Ors* [1993] 2 MLJ 9. A range of sentences imposed may depend on a number of considerations, inter alia, the F differences in their mitigation, the role played by each of the accused persons and the degrees of culpability, their antecedents etc. The following principles are stated by Thomas in *Archbold* 1993:

Where two or more offenders are to be sentenced for participation in the same G offence, the sentences passed on them should be the same, unless there is a relevant difference in their responsibility for the offence or their personal circumstances. If there are reasons for imposing a particular form of sentence ... on one which does not apply to the other, it is not necessarily wrong to make such an order in respect of one and impose a sentence of imprisonment on the other (paras 5–169).

H

COMPARISON WITH SENTENCES IN OTHER CASES FOR SIMILAR OFFENCES

I **[28]** For comparison with sentences in other cases for similar offences to determine the trend of sentencing policy, below are some of the past decided cases with emphasis on the accused violent conduct and the type of weapons used.

(1) *Public Prosecutor v Ravindran & Ors*

The six accused and two others still at large had abducted the deceased and stabbed and punched him several times. The body of the deceased was then thrown into a stream at Sentul. The deceased died of his injuries.

The original charge of murder under s 302 of the Penal Code had been amended to the first limb of s 304 of the Penal Code. All the six accused pleaded guilty to the reduced charge.

Sentence:

(a) The first, third, fourth, fifth and sixth accused were sentenced to *eight years imprisonment* from date of arrest.

(b) The second accused who had two previous convictions was sentenced to *eight years and six months imprisonment* from date of arrest.

(2) *Public Prosecutor v Nazarudin bin Ahmad & Ors*

A deceased body was found lying in an open space. The first, second and third accused were subsequently arrested. Police investigation revealed that the three accused hijacked a taxi driven by the deceased. While in the *kampung* road, the first accused took out a revolver from his waist and demanded money from the deceased. As the deceased had no money, the first accused shot the deceased head. The deceased body was removed from the taxi and dumped on the ground. The accused drove the taxi and later abandoned it.

Police investigation revealed that the first accused stole the said revolver from a police detective. A post mortem on the deceased disclosed that the cause of death was due to gun shot wound on the head.

All the three accused pleaded guilty to an amended charge under the first limb of s 304 of the Penal Code.

Sentence:

(a) The first accused, 22 years old was sentenced to *eight years imprisonment* from the date of remand.

(b) The second accused, 27 years old who had previous convictions was sentenced to *nine years imprisonment* from the date of remand.

(c) The third accused, slightly 17 years old, a juvenile and first offender was sentenced to *five years imprisonment* from the date of remand.

(3) *Public Prosecutor v Tai You Choy* [1982] CLJ (Rep) 687

The accused and deceased were known to each other. The deceased abused the accused. He too threatened to dismiss the accused from employment. The accused felt humiliated and shamed.

The accused retaliated. He chased the deceased who ran up to the first floor. When the accused came face to face with the deceased, the deceased armed with an iron pipe swung at the accused. It missed him. The accused stabbed the deceased with a sharp bearing scrapper on the chest which ruptured the deceased's heart. He died.

The accused pleaded guilty to an amended charge under s 304 of the Penal Code. He had three previous convictions as follows:

(a) Three years imprisonment for an offence of robbery, four years imprisonment and two strokes of the rotan for having in possession of offensive weapon. The sentence to run concurrently.

(b) One year imprisonment and three strokes of rotan for an offence of attempted extortion, and

(c) One year imprisonment and one stroke of rotan for having in possession of offensive weapon.

Sentence: *eight years imprisonment* from the date of arrest.

(4) *Pendakwa Raya lwn Soo Tai Leng* [2005] 7 MLJ 363; [2005] 7 CLJ 218

A quarrel between an estranged husband and wife. The accused wife poured petrol on the deceased husband and set him on fire. The deceased husband suffered severe burnt and subsequently he died.

At the close of the prosecution case, the murder charge under s 302 of the Penal Code was amended to culpable homicide not amounting to murder under s 304(a).

Sentence: *eight years imprisonment* from the date of arrest.

(5) *Public Prosecutor v Tay Chuan Beng & Anor* [1989] 1 MLJ 403

The second accused was a prostitute. The deceased had intercourse with her. Not only he did not pay for her service, he grabbed the second accused bag which contained some money. The second accused resisted. The deceased punched her on the face several times. Subsequently, the second accused together with the first accused confronted the deceased. The first accused picked up an iron pipe along the way and attacked the deceased. The second accused (appellant) participated in the attack by using her fists.

The first and second accused pleaded guilty to the charge under s 304 of the Penal Code.

The second accused (appellant) had a history of mental illness — schizophrenic illness.

Sentence: e*ight years imprisonment* from the date of arrest.

(6) *Pendakwa Raya lwn Noor Hafidah Yeop Mat Isa dan lain-lain* [2007] 4 MLJ 478; [2007] 7 CLJ 570

OKT 1 was somewhat jealous of the deceased. OKT 1 gathered OKT 2, OKT 3 and Uda and hatched a plan to injure and if needed be to kill her. OKT 1 identified the deceased to OKT 2 and OKT 3. OKT 2 and OKT 3 went to the deceased house and a struggle occurred between OKT 2 and the deceased. OKT 3 assisted OKT 2. OKT 2 stabbed three to four times on the deceased abdomen, chest, neck and on his back. OKT 2 also smashed the deceased head and body with a dressing table chair. OKT 3 and OKT 2 took the deceased's gold bracelets and gold necklaces. OKT 2 and OKT 3 left the deceased's house in a waiting car driven by Uda.

OKT 1, OKT 2 and OKT 3 were charged for an offence of murder under s 302 of the Penal Code read with s 109 of the Penal Code. After nine witnesses gave evidence, the charge against OKT 1 was amended to s 109 and s 304(a) of the Penal Code.

Whilst the charge against OKT 2 and OKT 3 was amended to s 304(a) of the Penal Code.

OKT 1, OKT 2 and OKT 3 pleaded guilty to the amended charge.

Sentence:

(a) OKT 1 was sentenced to *7½ years imprisonment* from the date of arrest.

(b) OKT 2 and OKT 3 were sentenced to *11 years imprisonment* from the date of arrest.

(7) *Public Prosecutor v Soh Soo Yang & Anor* [2001] 5 MLJ 356; [2000] 1 LNS 296

At the request of her aunt, the first accused, second accused and one YKC who was still at large, armed with two parangs and a stick attacked the deceased at a condominium car park. They brought along the parangs and the stick. The deceased escaped and ran out to the main road. The second accused drove a van and caught up the deceased at the main road. The first accused and YKC attacked the deceased until he died.

The first and second accused had pleaded guilty to a re-amended charge under s 304(a) of the Penal Code.

Sentence:

(a) The first accused was sentenced to *13 years imprisonment*.

(b) The second accused was sentenced to *nine years imprisonment*.

(c) Both sentences to commence from date of arrest.

(8) *Pendakwa Raya lwn Chan Akau* [2000] 4 MLJ 471

The accused approached the deceased who was with his friend in front of a restaurant. The accused scolded, abused and chased the

deceased and his friend. The accused then went to the restaurant and came back to the accused with two choppers. The accused swung the said chopper and struck the deceased neck. When he saw the deceased neck was bleeding, the accused ran away. He threw away the chopper near the restaurant.

The accused pleaded guilty to the amended charge under s 304(a) of the Penal Code.

Sentence: *ten years imprisonment* from the date of arrest.

(9) *Public Prosecutor v Nasir bin Malik* [1995] 3 MLJ 637; [1995] 1 LNS 196

The deceased had an argument and a fight with the accused in the bus. The deceased disembarked from the bus and sought help from his friend.

The deceased and his friend chased the bus on a motorbike. The bus was stopped. The accused ran away but was caught by the deceased. A struggle ensued. The accused took out a knife and stabbed the deceased a few times in the back and chest. The accused then fled.

The accused pleaded guilty to the amended charge under s 304(a) of the Penal Code.

Sentence: 12 years imprisonment from the date of arrest.

(10) *Public Prosecutor v Safian Abdullah & Anor* [1983] 1 CLJ 324

The first accused, 20 years old and second accused, 21 years old, planned a robbery. The first accused was armed with a lethal weapon 'kerambit'. The second accused was equipped with a pair of hand gloves. They went to the deceased shop. They lured him out of the shop. Having entered the shop, the second accused grabbed the deceased and stuffed the hand gloves into the victim's mouth. The first accused came out from the hiding spot, slashed the deceased. The deceased who overpowered and dragged him and mercilessly attacked him with the 'kerambit', crushed the deceased head with empty bottles and used a rope to strangle him. The attack was ferocious. The deceased suffered multiple deep wounds on his body, neck and face. Several of his ribs were broken. The deceased died from thoracic, intra cranial and intra abdominal injuries with asphyxia due to strangulation.

The first and second accused pleaded guilty to an amended charge under s 304(a) of the Penal Code. In delivering his judgment, Wan Yahya J (as he then was) said:

> In my opinion these two accused, in spite of their ages, are dangerous young criminals of aggressive propensity. Unless they are properly reformed they will continue to be a serious menace to society. A

sufficiently long period of detention will be required for their correction, reformation and rehabilitation before they can be allowed to return to society. A

Sentence: first and second accused were sentenced to *14 years imprisonment* from the date of arrest. B

(11) *Vinaga Moorthy a/l Gopal v Public Prosecutor* [2003] 2 MLJ 87; [2003] 1 CLJ 758

The appellant and six others armed with an assortment of weapons that included six parangs, a pipe and a bottle approached the house of the victim. There they set upon their victim. Their physical attack resulted in the death of Rajasegaran. C

The appellant and two others were charged under s 304 read with s 149 of the Penal Code. They pleaded guilty and were sentenced to *12 years imprisonment*.

The appellant appeal against sentence was dismissed. Gopal Sri Ram JCA said: D

To these element, we would add the necessity for the court to take into account the public interest which is the paramount consideration in all sentencing cases. E

We have considered this case most carefully. The circumstances in which the offence was committed are grave indeed. Mr Chandra with his customary frankness conceded that the facts disclose pre-meditation. This is therefore not a case of chance medley where the victim and the appellant know each other. Having regard to the serious nature of the offence and taking into account those factors which we have referred to a moment ago, we are unable to say that the sentence in the present case is manifestly excessive. F

(12) *Ganesan a/l Nachiappan & Ors v Public Prosecutor* [2000] 3 MLJ 244; [2000] 3 CLJ 302 G

Originally the six appellant were charged for murder under s 302 of the Penal Code read with s 34 of the Penal Code. Mid way through the prosecution case, the charge was amended to s 304(a) read with s 34 of the Penal Code. H

All the appellants pleaded guilty to the amended charge under s 304(a) read with s 34 of the Penal Code.

The learned trial judge sentenced each of the appellant to *14 years imprisonment* from the date of their respective arrest. Dissatisfied, hence this appeal by the appellants. The prosecution also cross-appeal alleging inadequacy of the sentence. I

The Court of Appeal dismissed the appellants' appeal as well as the prosecution cross appeal. Haidar Mohd Noor JCA commented on the appellants' appeal as follows.

> The injuries inflicted on the deceased were serious. There were altogether *45 stab wounds*. The gory photographs at pp 285 to 288 of the appeal record clearly showed the seriousness of the injuries. The deceased was badly disfigured. The learned judge was therefore right to take into account the public interest element in view of the seriousness of the offence committed by the appellants.

Of the prosecution cross-appeal, His Lordship said:

> As regards the cross-appeal by the Public Prosecutor, we were of the opinion that the sentence imposed is not manifestly inadequate for the reason that the learned judge had properly exercised his discretion and he had taken into account the interests of the appellants and balanced them with the public interest. In the circumstances we should not disturb the sentence imposed. The cross-appeal was accordingly dismissed.

SENTENCES OF THIS COURT

[29] I have no doubt that the offence of culpable homicide not amounting to murder punishable under s 304(a) of the Penal Code is a serious offence. A precious life of Yusof Kolam, a young man of Thai nationality, aged 28 years had perished forever. His life is priceless and no amount of money may redeem or bring back his life from the grave. What left is the grief and sorrow suffered by the family members of the deceased. Having studied the authorities enumerated above, a custodial sentence is certainly called for. A non-custodial sentence such as a binding over in a certain amount of money for good behaviour with surety under s 294 of the Criminal Procedure Code is quite inappropriate. The next question to be addressed is — what is the appropriate length of custodial sentence which is neither manifestly excessive, nor manifestly low in the circumstances of this case.

[30] The most pivotal factor that I have taken into consideration is the interest of the public or society. The safety and security of the society must be protected and preserved at all times from undesirable elements. Any duration of imprisonment intended to be imposed must neither be too long, nor too short. The imprisonment term must be sufficient to reform and rehabilitate both OKT 1 and OKT 2 from going back to their old follies and at the same time the length of imprisonment term must act as a deterrence to the like minded persons. If the term is too long and harsh, OKT 1 and OKT 2 may find it difficult to fit and settle themselves in the society, upon their release from the prison gate. If this is to happen, it is not only unbeneficial to both OKT 1 and OKT 2 but also not in the interest of the society at large. OKT 1 and OKT 2 should be encouraged to return to the main stream of the society to lead a peaceful and harmonious life.

[31] Another factor that this court take into account is the modus operandi of the murder. In this case, the facts disclosed that the murder was not committed in the course of any crime, for example, an armed robbery. Neither was there any pre-meditation. The manner the murder was committed is not as ferocious and gruesome as the murder in *Safian Abdullah & Anor* which authority is relied upon by the learned DPP to impress this court to impose a deterrent sentence. Let us re-visit the facts of the instant case. The deceased was partly to blame for his death. He was the source of the quarrel. The deceased had made fun and laughed at OKT 1 as he had succeeded to fool OKT 1 to trap the 'musang' which was allegedly on the rubber trees at the rear of the deceased shed but in fact there was none. He was trick by the deceased. Thereafter, the quarrel ensued between OKT 1, OKT 2 and two other friends who were still at large. OKT 1 grabbed a piece of wood, P6 and hit the deceased in the face/head. The deceased collapsed. OKT 2 and two friends of theirs who were still at large punched and kicked the deceased several times until he was lifeless. Having realized that the deceased had died, they carried and threw him into the canal about 50 meters from the deceased shed. The facts too disclosed that they were all drunk after consuming liquor. However, self-induced intoxication is not a defence: see s 85(1) of the Penal Code and the Federal Court case of *Kenneth Fook Mun Lee v Public Prosecutor* [2007] 2 MLJ 130; [2006] 4 CLJ 359. The facts in *Safian Abdullah & Anor*, are these. Both the accused were dangerous young criminals of aggressive propensity. They had planned the robbery. They lured the deceased and an old man out of his shop. The second accused stuffed the hand gloves into the old man's mouth. The first accused emerged from the dark hiding spot and slashed the deceased. The deceased was overpowered, dragged him and mercilessly attacked him. The attack was ferocious. The deceased suffered multiple deep wounds on his neck, body and face. Several of his ribs were fractured. The deceased was also strangled using a rope. The cause of death was thoracic, intra cranial and intra abdominal injuries with asphyxia due to strangulation.

[32] As regard the murder weapon, in this case it was a piece of wood measuring approximately three feet which OKT 1 picked up by chance at the scene of the murder. While in *Safian Abdullah & Anor*, the first accused was armed with a lethal weapon 'kerambit' and the second accused was equipped with a pair of hand gloves. On those facts, Wan Yahya J sentenced the first and second accused to 14 years imprisonment from the date of their arrest. His Lordship said, inter alia, 'a sufficiently long period of detention will be required for their correction, reformation and rehabilitation before they can be allowed to return to society'.

[33] In *Vinaga Moorthy a/l Gopal*, there were an assortment of weapons, including six *parang*s, a pipe and the facts disclosed pre-meditation; in

Ganeson Nachiappan & Ors, there were 45 stab wounds on the deceased body; in *Nasir bin Malik*, the accused used a knife to stab the deceased; in *Chan Akau*, the accused was armed with two choppers which he struck the deceased neck; in *Soh Soo Yang & Anor*, the two accused were armed with two *parang*s and a stick and *Noor Hafidah Yeop Mat Isa dan lain-lain*, the murder was committed in the course of armed robbery of gold bracelets and necklaces. The deceased was stabbed three to four times in the abdomen, chest, neck and at the back.

[34] On OKT 1 emotional plea that his mother had passed away and his aged father is now in poor health and OKT 2's plea that he was a widower for 12 years and his children, aged 15 years and 13 years respectively are now under the care of his parents have no mitigating effect. The pleas of family hardship are commonly encountered in mitigation in criminal proceedings to attract sympathy from the court. However, I do take into consideration that both OKT 1 and OKT 2 were first offenders with no previous convictions. Their clean record tilt in their favour. Even the accused who had three previous convictions of similar nature in *Tai You Choy* had received a sentence of eight years imprisonment from the date of arrest.

[35] This court, too, is with OKT 1 when he pleaded that he was remorseful over the death of the deceased and had promised not to repeat similar or any other crimes in future. Similarly OKT 2's plea that he had repented and, he tendered his apology to the family members of the deceased.

[36] OKT 1 and OKT 2 pleas of guilty which were entered at the earliest reasonable opportunity which save the trouble from calling the prosecution witnesses to take the stand are plus points for OKT 1 and OKT 2 which I considered in their favour. A discount should be given to the extent of one-third of what otherwise would have been the sentence. According to Visu Sinnadurai J in *Ravindran & Ors*, having compared sentences in other cases of similar offence, said at p 52 as follows:

> It, therefore, appears that the practice in Malaysia and Singapore, as a general rule, is to impose an eight to ten year term of imprisonment for a similar offence.

[37] As can be seen from 12 authorities listed above, the range of sentences under s 304(a) imposed on the accused persons who plead guilty are roughly between eight years to 14 years imprisonment, of course, depending on the facts of each individual case. In this case, if OKT 1 and OKT 2 had claimed trial to the alternative charge, P4, and in the event that I found them guilty, I have no qualm to sentence them to 12 years imprisonment. Having given a discount of one-third, I therefore, exercise my discretionary power, to sentence OKT 1 to eight years and six months imprisonment with effect from

the date of arrest and sentenced OKT 2 to eight years of imprisonment also from the date of arrest. The sentence of OKT 1 is higher by six months imprisonment because of the role played by him. He struck the fatal blow on the deceased head which was consistent with the cause of death as stated in the postmortem report, P7, that is, head injury due to blunt trauma.

Accused persons convicted and sentenced.

Reported by Andrew Christopher Simon